



Federal Communications Commission
Washington, D.C. 20554

May 8, 2012

Steven A. Weiswasser
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

Re: Applicability of 47 C.F.R. § 1.1204(a)(2)

Dear Mr. Weiswasser:

This responds to your letter of May 1, 2012 asking the Office of General Counsel (OGC) to confirm that you may confer with OGC on an ex parte basis about issues raised in the appeal pending before the Second Circuit in *Time Warner Cable, Inc. and National Cable & Telecommunications Association v. FCC*, No. 11-4138 (2d Cir. Filed Oct. 11, 2011). You indicate that some of the issues presented in this appeal are similar to those raised by Comcast Cable Communications in *The Tennis Channel, Inc. v. Comcast Cable Communications LLC* (MB Docket No. 10-204), in which you represent The Tennis Channel, Inc., and that your client may wish to file an amicus brief in the *Time Warner* litigation in support of the Commission's position.

Under 47 C.F.R. § 1.1204(a)(2), a presentation is exempt if "[t]he presentation is made by or to the General Counsel and his or her staff and concerns judicial review of a matter that has been decided by the Commission." As we previously advised you orally, this exemption permits you to discuss with the staff of OGC issues raised in the *Time Warner* litigation for purposes of assisting the Commission as amicus curiae or deciding whether to file an amicus brief in that litigation. You should not discuss these issues with any Commission decision-making personnel other than the staff of OGC, nor should you discuss the *Tennis Channel* litigation, which is not subject to judicial review.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Joel Kaufman", is written over the typed name and title.

Joel Kaufman
Associate General Counsel and
Chief, Administrative Law Division
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cc:

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